

In the High Court of Judicature at Madras

Dated:21.09.2006

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM
and

The Hon'ble Mr. Justice S. MANIKUMAR

Habeas Corpus Petition No.728 of 2006

Vijayalakshmi ... Petitioner/Wife of the detinue.
vs.

1. The Secretary to Government
Food, Co-operation and Consumer
Protection Department
Chennai 600 009.

2. The District Collector
and District Magistrate
Theni District, Theni.

3. The Secretary to the Government
Food and Consumer Protection
Department, Government of India
New Delhi.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of writ of habeas corpus as stated therein (ie) to call for the records in connection with the order of detention passed by the 2nd respondent 18.7.2006 in detention order No.02/2006/CS against the petitioner husband Ayyappan son of Sadayappa Pillai aged about 31 years who is confined at Central Prison, Madurai and set aside the same and direct the respondents to produce the detinue before this Honourable Court and set him at liberty.

For petitioner : Mr. V. Parthiban

For respondents : Mr. M. Babu Muthu Meeran
1 to 2 Addl. Public Prosecutor

Mr.P.Kumaresan, ACGSC for R.3

ORDER

(Order of the Court was made by P. SATHASIVAM,J.)

The petitioner Vijayalakshmi, wife of the detenu by name Ayyappan, who was detained as a "Black Marketeer" as contemplated under Section 3(2)(a) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, by the impugned detention order dated 18.07.2006, challenges the same in this Petition.

2. Heard learned counsel for the petitioner, learned Additional Public Prosecutor for the respondents 1 and 2 and Mr. P. Kumaresan, learned Additional Central Government Standing Counsel for the third respondent.

3. Mr. V. Parthiban, learned counsel for the petitioner at the foremost submitted that inasmuch as crime number available only at the time of registering the First Information Report found a place in the document prepared much earlier, in the absence of clarification of the said vital error by the detaining authority, his ultimate detention order is liable to be quashed. Elaborating the above argument, learned counsel for the petitioner has brought to our notice that the arrest memo, which is available at page 44 of the paper book contains Crime No.388 of 2006 and seizure mahazar, which is available at page 42 of the paper book also contains Crime No.388 of 2006. It is pointed out that the above documents were allegedly prepared earlier to registering the case with crime number. In such circumstances, in the absence of clarification by the authority concerned about the vital error, the detention order is to be interfered with. We verified both the documents as well as the time of arrest and preparation of those documents. In the counter affidavit, particularly in para 5, the District Collector, Theni / detaining authority has stated, "The crime number is ascertained over phone from the Unit at 07.15 hours. There is no prejudice is caused to the detenu in connection with the crime numbers found in the documents and his fundamental right is not affected in any manner." In view of the above explanation that the crime number was ascertained over phone at the time of preparation of arrest memo and seizure mahazar, the contention raised by the learned counsel for the petitioner is liable to be rejected.

4. The learned counsel for the petitioner by drawing our attention to page 64 of the paper book submitted that though the English version of the order passed by the learned Judicial Magistrate, Uthamapalayam contains a material aspect, viz., if the detenu is enlarged on bail, he would commit such offence, the same does not find a place in the Tamil version of the said order, which is available at page 66 of the paper book. We verified the order of the learned Magistrate dated 11.07.2006, both English and Tamil versions. It is true that except one sentence in the first paragraph all other portions have been correctly translated and supplied to the detenu. First of all, it is not in dispute that it is an order

passed by the learned Magistrate granting him bail and based on the same he was released on bail. In such circumstances, merely because there is omission of one sentence of the said order in the Tamil version, we are of the view that the detention order cannot be faulted with. Further, the detenu has not shown any prejudice caused to him due to the same. Accordingly, we reject the said contention.

5. Finally, the learned counsel for the petitioner submitted that though in para 6 of the grounds of detention it is stated that the detenu Ayyappan was arrested in connection with Uthamapalaym Civil Supplies CID Crime No.388 of 2006, and he moved bail petition in Criminal M.P.No.5911 of 2006 before the Judicial Magistrate, Uthamapalayam and he went on bail on 11.07.2006, the documents, such as furnishing security etc., were not placed either before the detaining authority nor supplied to the detenu. We are unable to accept the said contention. It is not in dispute that on the orders of the Judicial Magistrate, Uthamapalayam, the detenu was released on bail on 11.07.2006. When such position is not disputed and the detaining authority has considered all the relevant and required materials, merely because the documents, such as furnishing security and acceptance of the same by the Court are not relevant and relied on by the detaining authority; hence the order of detention cannot be faulted with. At any rate, the reference made to the effect that the detenu came out on bail on 11.07.2006, is only a referred statement and no prejudice was shown by the detenu, because of non-placement of said documents. In view of the said factual details, we are of the view that the decision relied on by the learned counsel for the petitioner, viz., 1994 (2) Law Weekly (Criminal) 618 (Irudhi @ Irudayanathan and another vs. State of Tamil Nadu etc., and another), is not applicable to the case on hand.

6. Except the above grounds, no other ground has been raised before us.

In the light of what is stated above, we do not find any error or infirmity in the impugned order of detention and there is no valid ground for interference. Hence, this petition fails and the same is dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

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Chennai 600 009.
2. The District Collector
and District Magistrate
Theni District, Theni.
3. The Secretary to the Government
Food and Consumer Protection
Department, Government of India
New Delhi.
4. The Superintendent, Central Prison, Madurai.
5. The Public Prosecutor, High Court, Madras.

H.C.P.No.728 of 2006

Dt.21.09.2006

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